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In the

SUPREME COURT OF THE UNITED STATES

No. 942
October Term, 1965

~~THE CRAWFORD COUNTY BAR ASSOCIATION, BY FINES F. BATCHELOR, JR., PRESIDENT DAVID O. PARTAIN, VICE-PRESIDENT, AND N. D. EDWARDS, SECRETARY-TREASURER, AND~~ CECIL L. ALEXANDER ..... *Appellants and Intervenors*

v.

ORVAL E. FAUBUS, GOVERNOR, KELLY BRYANT, SECRETARY OF STATE, AND BRUCE BENNETT, ATTORNEY GENERAL, BEING THE MEMBERS OF "THE BOARD OF APPORTIONMENT" OF THE STATE OF ARKANSAS ..... *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

JURISDICTIONAL STATEMENT ON BEHALF OF APPELLANT CECIL L. ALEXANDER

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Appellant, Cecil L. Alexander, appeals from the judgment of the United States District Court for the Eastern District of Arkansas, entered on November 4, 1965, approving the plan of reapportionment of the membership of the Senate and House of Representatives of

the General Assembly of the State of Arkansas submitted by Appellees, the Board of Apportionment of the State of Arkansas, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the District Court for the Eastern District of Arkansas, Western Division, holding the prior Arkansas Apportionment plan unconstitutional, is reported in 238 F. Supp. 290. Following the decision, The Board of Apportionment submitted to the District Court the apportionment plan at issue in this appeal. The decision of the District Court approving this latter plan is not reported. A copy of the opinion is attached hereto as Appendix A. The judgment is to be found in Appendix B.

JURISDICTION

This suit was brought to attack a plan of apportionment of the Arkansas Legislature alleged to deprive the citizens of the State of equal protection of the laws in violation of the Fourteenth Amendment. Jurisdiction of the District Court accordingly is based upon 42 U.S.C. §§1983, 1988, and 28 U.S.C. §1343(3). As the complaint challenged the constitutionality of a State constitutional provision and prayed for an injunction against the continued enforcement of that provision, a statutory court of three judges was convened pursuant to 28 U.S.C. §§2281, 2284(1).

The opinion of the court below, dated and filed November 4, 1965, held that the plan of apportionment proposed by The Board of Apportionment to replace the prior

unconstitutional legislative districts meets constitutional standards. A judgment approving the plan (to be put into effect not later than the November, 1966, General Election) was also entered on November 4, 1965.

Notice of appeal was filed by Appellant in the District Court November 26, 1963. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. §§1253, 2101(a). The following decision sustains the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Baker* v. *Carr*, 369 U.S. 186 (1962).

QUESTIONS PRESENTED

In arriving at its apportionment plan, The Board of Apportionment proceeded upon the assumption that so long at a district of contiguous counties did not vary by more than 15% from the ideal size, no other factors need be taken into consideration.

May The Board of Apportionment constitutionally ignore all other factors so long as no one district varies from the ideal size by more than 15%?

Is the use of a mathmatical formula, to the exclusion of other relevant factors, constitutionally permsisible in framing a plan of legislative apportion?

[This statement of the Questions Presented restates the substance of Questions II, IV, and IX of the Notice of Appeal. Sup. Ct. R. 15(1)(c)(2).]

STATUTES INVOLVED

This appeal does not question the validity of any statute or treaty.

STATEMENT

This action was brought on July 15, 1964, one month after the Supreme Court's decisions in the "Reapportionment Cases," to attack the constitutionality of the then existing apportionment of the Legislature of the State of Arkansas. The defendants in the suit were the Governor, the Secretary of State, and the Attorney General of the State, as these State Officials comprise "The Board of Apportionment" created by Section 1 of Amendment 45 to the Arkansas Constitution.

The Board of Apportionment created by Amendment 45 was charged with making decennial reapportionments of the Arkansas Senate and House of Representatives, but their reapportionment was confined within limits set by other provisions of Amendment 45. In general, each of the seventy-five counties had been apportioned at least one of the authorized one-hundred members of the House of Representatives, while the district areas and their representation in the Senate were frozen without respect to future population shifts. The then existing plan of apportionment clearly failed to meet the tests announced in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and its companion cases. The District Court so held on January 28, 1965. *Yancey* v. *Faubus*, 238 F. Supp. 290 (1965).

The District Court directed The Board of Apportionment to file a valid scheme of apportionment by June 15, 1965. The decision that certain portions of Amendment 45 to the Arkansas Constitution were, federally speaking, unconstitutional, raised questions as to the validity of the remaining provisions and as to the very existance of The Board of Apportionment. These questions were answered by the Arkansas Supreme Court in *Faubus* v. *Kinney*, 239 Ark. 443, 389 S.W. 2d 887 (1965).

The Arkansas Supreme Court held that the provisions of Amendment 45 establishing The Board of Apportionment and providing for 100 members in the House of Representatives and 35 members in the Senate were distinct and separate provisions from those portions held federally unconstitutional, and were therefore of continuing validity. It specifically held that The Board of Apportionment was the proper state authority to undertake the reapportionment ordered by the Federal District Court.

After receiving one extension of time, The Board of Apportionment filed with the District Court on July 15, 1965, its plan revising the State's legislative apportionment. This is the plan (ultimately approved by the District Court on November 4, 1965) which is the subject of this appeal.

The plan filed by The Board of Apportionment provides for the division of the 75 counties into 44 House of Representative districts. Each district is to be composed of one or more entire counties, with the 100 representatives being distributed among the 44 districts on the basis, roughly (as will be explained), of one representative to every 17,860 persons.

The plan for the Senate calls for the division of the 75 counties into 25 districts, again composed of one or more entire counties, with the 35 senators being distributed among these districts on the basis, again roughly, of one senator to every 51,028 persons.

The complete plan of reapportionment may be found in Appendix A, at the conclusion of the District Court's Opinion.

It should be stated that at all times in this case all parties have used a rounded 1960 census population for the State of Arkansas of 1,786,000 persons. This figure does not purport to represent the number of registered voters or even the number of eligible voters. In dividing the State's 75 counties into House of Representative or Senate districts, The Board of Apportionment used the "natural" or "ideal" ratio set out in *Yancey* v. *Faubus, supra,* [1 to every 51,028 persons for the Senate; 1 to every 17,860 persons for the House], but allowed a variance per district from the "natural" or "ideal" ratio of a plus or minus 15%.

The filed apportionment plan was attacked by the original plaintiff, John Yancey, and also by the Crawford County Bar Association, which was allowed to intervene on behalf of the people of Crawford County.

Also allowed to intervene were Appellant Cecil L. Alexander, the present duly elected Member of the Arkansas House of Representatives from Cleburne County, and Mac Evans, the Representative from adjoining Van Buren County, appearing, respectively, on behalf of the people of their counties.

The Board of Apportionment's plan was approved by the District Court on November 4, 1965, and the plan was ordered into effect not later than the General Election to be held in November, 1966. Notice of Appeal was filed on behalf of the Crawford County Bar Association and Cecil L. Alexander on November 26, 1965. As the issues argued on appeal by the Crawford County Bar Association and by Cecil L. Alexander are not the same, separate jurisdictional statements have been filed by each Appellant.

THE QUESTIONS ARE SUBSTANTIAL

"One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination'. *Lane* v. *Wilson,* 307 U.S. 268, 275; *Gomillion* v. *Lightfoot,* 364 U.S. 339, 342."

Reynolds v. *Sims,* 377 U.S. 533 (1964), at 563.

I

The great number of suits to reapportion state legislatures which were filed following the decision of this court in *Baker* v. *Carr,* 369 U.S. 186 (1962) have substantially corrected the under-representation of urban areas which was such a conspicuous feature of most pre-*Baker* apportionments.

Even the briefest comparison of the apportionment plan attacked in this appeal with the prior Arkansas plan demonstrates the truth of the District Court's statement that " . . . the plan is certainly an improvement over the apportionment which existed prior to the Board's action, and . . . goes far toward correcting the imbalance in representation of the rural over the urban areas of the State which brought about the litigation in the first place" (Record 80-81).

It may also be agreed, as the District Court stated, that the apportionment of the Arkansas Senate comes very close to matching the ideal representation ratio, with relatively minor deviations from district to district (Record 80).

What then are Appellant Alexander's objections to this new plan of apportionment? What is allegedly

wrong with the plan of apportionment of the Arkansas House of Representatives?

II

A brief description of the political womb in which this plan of apportionment was conceived and nurtured will help explain the basis for the legal objections raised by Appellant Alexander on behalf of the residents of his district, Cleburne County.

Though the Board of Apportionment presented no evidence to the District Court to explain its plan of apportionment, its members were widely quoted, when the plan was submitted to the District Court as being dissatisfied themselves with the plan:

> Mr. Faubus said some of the districts were inequitably apportioned, . . .
>
> [Attorney General] Bennett agreed that in some cases voters will be disenfranchised by the plan.
>
> Arkansas Gazette, Page 1B, Thursday, July 15, 1965 (Appendix E).

Obviously some of this "dissatisfaction" was feigned, but soon other reports appeared which indicated that not all districts were formed in consideration of those impartial factors approved by this Court. It began to appear that some Districts were formed to accommodate special political interests:

> Representative Paul Van Dalsen said Thursday that Perry County was put in the same House

district as Pulaski County in the reapportionment of the Arkansas legislature at his request.

Arkansas Gazette, Page 1A, Friday, July 16, 1965 (Appendix F).

We do know that Sheriff Marlin Hawkins of Conway County didn't want his representative, Loid Sadler, running over in larger Faulkner County.

George Douthit, Backstage at the Capitol, Arkansas Democrat, Page 1D, Sunday, August 8, 1965 (Appendix G).

To say the least, such public pronouncements by the members of The Board of Apportionment and such interviews and reports published by reporters regularly covering the Arkansas political scene aroused Appellant's interest, for his County, Cleburne, had been placed in House of Representatives District Number 14 with Van Buren County and the aforementioned Faulkner County.

The political power of Sheriff Marlin Hawkins in Conway County, and the deferential respect paid his "wishes" at the State Capitol have been given national attention more than once. This is Conway County and its Sheriff, Marlin Hawkins, as reported in The Atlantic Monthly by one Roy Reed ("How to Lynch A Newspaper", Vol. 214, Pages 59-63 (November, 1964) at 59-60):

Three well-known Arkansas political leaders, all friends of the administration of Governor Orval E. Faubus, are among the overseers of the Conway County machine. Loid Sadler, a Morrilton busi-

nessman, is Conway County's representative in the state legislature. Nathan Gordon of Morrilton is a lawyer, a World War II hero, and the lieutenant governor of the state. Paul Van Dalsem of Perryville represents neighboring Perry County in the state House of Representatives and is generally considered the boss of the legislature. He is connected with the Conway County machine through friendship and business.

Sheriff Marlin Hawkins is the administrative head of the Conway County machine. When Arkansas reformers need an unsightly example, they mention the sheriff of Conway County. However, it probably would have to be said that Sheriff Hawkins, like Shaw's Lucifer, is not so black as he is painted. . . . In short, Sheriff Hawkins does what needs to be done to take care of his home organization. Since the county's chief export is votes, the sheriff has had to deal with first one and then another of the outside political forces that need votes. During one period, he pledged and faithfully delivered the vote of Conway County to a series of liberal causes, including the re-election of the famous moderate, former Congressman Brooks Hays. In those days, the liberals described the sheriff — with grins and sidelong glances — as good old Marlin. Eventually it became desirable for him to deliver the Conway County vote to the race-baiters and cotton-gin Babbitts of the Faubus organization. After that the liberals described Sheriff Hawkins as a threat to the democratic process.

One of the greatest variances from the ideal ratio of one representative for each 17,860 people in the plan

of apportionment submitted by the Board of Apportionment occurs with respect to Sheriff Hawkins' Conway County. This county, by itself, is House District 21. Its ratio varies by a minus 13.6%, for it has only 15,430 persons, who therefore are over represented (Record 82).

Neighboring House District 14, composed of Faulkner, Cleburne, and Van Buren counties, however, are *under represented* by the same degree, 13.6% (Record 82).

Could these large variances be reduced? Yes. A House District composed of Conway County and Faulkner County, both on the Arkansas River, would vary from the ideal ratio by a plus 11.2% and have 2 representatives. If Cleburne County and Van Buren County, within which lies the new Greers Ferry federal reservoir, were paired in a House District, the variance would be only a minus 8.8%, with one representative. A total variance range of 27.2% under the present plan would be reduced to 20%.

Moreover, all the evidence in the record shows that these two proposed districts, if formed, would have the community of interest, of problems, of socio-economic status, and of political and racial factors which the decisions of this Court and of the better considered District Court cases require.

For example, the evidence introduced shows that Conway and Faulkner both border the Arkansas River, are concerned with the development of navigation on that river and the economic opportunities incident to such navigation, are areas of recent industrial growth and expansion, are areas actively trying to attract even more industrial plants (ex: Conway County is the site of a new paper mill), and are, agriculturally, areas for row-crops.

On the other hand, Cleburne and Van Buren Counties have little industry and their agriculture tends toward dairy farming and feed crops. Some hard wood forestry is carried on, but the largest and most promising economic project for these two counties is their joint development of tourism on the new Greers Ferry Lake, which is entirely within their boundaries. The record shows several example of such joint projects already undertaken. [Record Exhibits C3, C4. And see Exhibit C7, (Tourist and Recreation Potential, Arkansas Ozark Region, Area Redevelopment Administration, U. S. Department of Commerce, August, 1963)].

In short, the record documentation of the economic, political, financial, and political interests and problems shows without contradiction that these interests and problems are best paired when Conway and Faulkner Counties are placed in one House District, and Cleburne and Van Buren Counties in another.

III

Certain other unusual features of this plan of apportionment may be briefly noted. Bradley County and Ashley County together form House District 42, although separated by a river which is bridged only by a railroad trestle (Record Exhibit C1), while only dirt roads and three ferries (again no bridges) connect Stone County with the rest of House District 9 (Record Exhibit C1; Appendix C).

The underlying economic and political interests served by the many groupings of a "river" county with "hill" counties (topograph map, Record Exhibit C1), pitting the larger urban areas against the smaller, poorer areas on economic issues, but allying urban and hill area Whites

against Negroes (who form a very minor portion of the population outside of the river and delta areas) on racial matters is a consideration outside the scope of a Jurisdictional Statement. Nevertheless, it is a matter necessarily passed upon and approved by the District Court's acceptance of the plan submitted by The Board of Apportionment.

Indeed, as the District Court itself found from the the record:

> There are indeed instances where a district is not comprised of the most compatible counties, based on their diverse geographic and political composition (Record 76).

IV

The political, practical objections of Appellant Alexander now begin to merge with his legal objections.

Cleburne, Van Buren, and Faulkner Counties, together with Stone County (population 6,294), have since 1952 comprised Senate District 14, which is to be continued under the new plan of apportionment (Appendix D). Since 1952 no person has been elected a State Senator from this District who has not been a resident of Faulkner County (Record Exhibit C10).

Now Cleburne, Van Buren, and Faulkner Counties are to be placed together in House District 14, with two representatives (Record 82).

Adopting the words of Mr. Justice Harlan in *Baker* v. *Carr*, 369 U.S. 186 (1962), dissenting at page 344, to the Board's proposed Senate and House Districts 14, the

"sophisticated" discrimination inherent in the present plan is made plain:

> It may, of course, be true that the floterial representative's function is to represent the whole district. But can it be gainsaid that as long as elections within the district are decided not by a county-unit system, in which each county casts one vote, but by adding the total number of individual votes cast for each candidate, the concern of the elected representatives will primarily be with the most populous counties in the district?

In truth, Senate and House Districts 14 isolate and disfranchise distinct "political elements of the voting population," having common interests and common problems, just as effectively as did the Tuskegee gerrymander struck down in *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960). Indeed, the case presents almost the reverse question of that raised by *Gray* v. *Sanders*, 372 U.S. 368 (1963) (striking down a plan of discrimination against urban voters within a single district), for here urban Faulkner County, which has over one-half the population in Senate District 14 and three-fifths of the population in House District 14, would dominate rural Cleburne and Van Buren Countiees in both Districts, and Stone County in the Senate District.

This is not an attack upon floterial districts per se. This is an attack upon the use of a pseudo-floterial district to effectively disfranchise distinct political and economic interests. Appellant Alexander believes that the record in this case and the findings of the District Court bring this case within the area not reached by this Court in *Fortson* v. *Dorsey*, 379 U.S. 433 (1965) (at 439):

> It might well be that, designedly or otherwise, a multimember constituency apportionment scheme.

under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. This question, however, is not presented by the record before us.

V

As has been pointed out, Cleburne and Van Buren Counties cannot together be considered as a district which, independently, would not be entitled to additional representation: Indeed, if they were to be composed into one district, with Faulkner and Conway Counties being placed together in another district, the approved plan of apportionment would be materially improved. Thus their appendage to Faulkner County in House District 14 cannot be viewed as the creation of a floterial district. See *Davis* v. *Mann*, 377 U.S. 678 (1964), at 686, f.n. 2.

Two constitutional grounds are urged by this appeal against the inclusion of Cleburne and Van Buren Counties with Faulkner County in House District 14 when they are also bracketed with Faulkner County in Senate District 14. As alleged in the "Questions Presented":

(A) The Board of Apportionment relied upon a supposed tolerance of 15%, plus or minus, from the ideal ratio in framing its plan; and

(B) By its use of this supposed tolerance, The Board of Apportionment excluded other relevant factors in framing its plan.

These two constitutional grounds will be considered in inverse order.

First, we shall consider a most important and constitutionally relevant factor ignored by The Board of Apportionment in framing its plan.

Second, we shall consider whether or not the record shows The Board of Apportionment to have relied solely upon the supposed 15% tolerance for "one man, one vote" districts in arriving at its own plan.

VI

> And the right of sufferage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.
>
> *Reynolds* v. *Sims,* 377 U.S. 533 (1964), at 555.

If multi-county, multi-representative districts are constitutionally permitted in both Houses of a bicamerial legislature, as the District Court held (Record 77-78) (a point litigated by another appeal of the District Court's decree), what constitutional standards prevent the "debasement or dilution of the weight of a citizen's vote" by a sophisticated plan of including small voting units with a larger voting unit in the same legislative district?

While this precise question has not yet been answered by this Court, the answer is clearly indicated in previous opinions:

> And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house.
>
> *Reynolds* v. *Sims, supra,* at 577.

> See *Maryland Committee for Fair Representation* v. *Tawes*, 377 U.S. 673, where we discussed the need for considering the apportionment of seats in both houses of a bicameral state legislature in evaluating the constitutionality of a state legislative apportionment scheme, regardless of what matters where raised by the parties and decided by the court below. Consistent with this approach, in determining whether a good faith effort to establish districts substantially equal in population has been made, a court must necessarily consider a State's legislative apportionment scheme as a whole. Only after an evaluation of an apportionment plan in its totality can a court determine whether there has been sufficient compliance with the requisites of the Equal Protection Clause. Deviations from a strict population basis, so long as rationally justifiable, may be utilized to balance a slight overrepresentation with a minor underrepresentation of that area in the other house. *But, on the other hand, disparities from population based representation, though minor, may be cumulative instead of offsetting where the same areas are disadvantaged in both houses of a state legislature, and may therefore render the apportionment scheme at least constitutionally suspect.*
>
> *Lucas* v. *Colorado General Assembly*, 377 U.S. 713 (1964), at 735, f.n. 27 (emphasis supplied).

The balancing of apportionment plans for a bicameral legislature so as to prevent the disfranchisment of one area under both plans, and the need for offsetting the areas in one plan's districts against the area in the other plan's districts, have been extensively considered by a District Court in *Holt* v. *Richardson*, 240 F. Supp. 724, (1965), probable jurisdiction noted 11 October 1965 (Appeal Numbers 318, 323, and 409). That Court held, *supra*. at Pages 729-730:

In reapportioning and redistricting the senate, both houses overlooked the fact that, to be valid, the makeup of the senate must postively complement the makeup of the house, to provide the vital equality of voter representation. Both houses of the legislature seemingly forgot that the schemes of districting each house, conjoined, must offer compensating advantages to the voters — not only to those voters within each representative district, be it senate or house, but to all voters throughout the State. While there perforce must be some overlaps of representation with the several senate and house districts, that overlap must not be such as to concentrate and intensify the voting power of a single senatorial representative district to the point that the voters therein have a built-in disproportionment representational advantage over any other voters of the State.

If the achievement of this goal is even to be approached, there should not be any monolithic political units of representation in that all-inclusive system of apportionment. Unless, within any single geographically defined political area or unit, there is a *meaningful and substantial difference in the composition of that body of electors therein, whose combined votes elect a senator, from that body whose combined votes elect a member of the house,* then the differing complexions and collective attitudes are lost, the necessary cross checking and resulting balance is absent, and the majorities therein are givin a disproportional monolithic command, not only within the narrow political unit, but also within the legislative bodies. *Such artifically concentrated political power negates any notion of equality of representation for the minorities entrapped therein,* as well as for all other electors of the State outside such a monolithic political unit.

> Compactness and contiguity of the territory are admittedly also factors, but community of interest, community of problems, socio-economic status, political and racial factors — each and all must be considered, and not only must the electoral districts be laid out with the totality of those factors having been taken into consideration, but even more the sum total of all of the districting must result in *substantial equality of meaningful representation* to each and all of the voters of the State (Emphasis supplied).

It is submitted that these decisions point the constitutionally correct path if bicameral legislatures are to have multi-member, multi-representative districts in both Houses. That is to say, whatever might be said in favor of the inclusion of Cleburne County in one multi-member district in which it would be disfranchised, no constitutional standard authorizes the compounding of such a condition by its inclusion in yet a second such district of the same constituent members. Cf., *Holt* v. *Richardson, supra; Lucas* v. *Colorado General Assembly, supra; Reynolds* v. *Sims, supra.*

VII

Does the record actually show that The Board of Apportionment proceeded upon the assumption that so long as a District of contiguous counties did not vary by more than 15% from the ideal size, no other factors need be taken into consideration?

The answer is that the record shows nothing else!

As previously stated, The Board of Apportionment offered no evidence in support of its plan. It did not undertake to explain any "rational factors" which might underlie the deviations from ideal representation contained in its plan.

In its brief filed with the District court, The Board of Apportionment argued only two points: (1) Whether its multi-member apportionment plan was, per se, invalid, which it answered by reference to this court's decision in *Fortson* v. *Dorsey*, 379 U.S. 433 (1965) (holding such plans not be be, per se, unconstitutional); and (2) Whether its plan of apportionment exceeded " . . . the amount of variance permissible from the average or ideal district when apportionment is based on population."

This last question was answered by citing *Toombs* v. *Fortson*, 241 F. Supp. 65 (N.D. Ga. 1965), which The Board of Apportionment's brief contended " . . . has indirectly approved a variance of 15% above or below the average district." The Board of Apportionment contended that the variances in its own plan came from its adherence to existing county lines in forming legislative districts.

This is then, the only evidence of a "rational theory" used by The Board of Apportionment in drawing up its plan (Appendix E). The Board of Apportionment did argue orally that it also sought to create the largest number of districts possible and sought to avoid large groupings of counties (Appendix H), and this oral argument is apparently the basis of the District Court's finding that:

> . . . The Board in constituting the new districts undertook to respect county lines and to create districts of convenient size and numerous enough to insure maximum representation to the largest possible number of individual counties (Record 75).

Since seventeen House of Representatives Districts (out of the plan's total of forty-four House Districts)

are one-county districts, of which only ten vary from the ideal ratio by as much as 7%, whereas a total of nineteen House Districts vary by more than 7%, it is clear that the deviations from the ideal ratio contained in the plan do not arise because The Board of Apportionment undertook "to insure maximum representation to the largest possible number of individual counties."

And, contrary to the District Court's findings, the record does not reflect that the insuring of maximum representation to the largest number of individual counties was ever a policy adopted by The Board of Apportionment.

Does *Toombs* v. *Fortson, supra,* "indirectly approve a variance of 15%"?

It is best to consider the exact language of the district court, *supra,* at 70:

> We decline to set a mathematical formula to be followed but do hold that a variance of more than 15% would be difficult, if not impossible, to justify.

That court had previously referred to a 15% variance as the "maximum variance" which *might* be justified as insubstantial, but stated:

> Of course, this does not mean a deliberate built-in variance of this degree [15%] but a good faith effort to meet the average with departure *only where necessary to afford individual representation to as many counties as possible. Toombs* v. *Fortson,* 241 F. Supp. 65 (1965), at 70 (Emphasis supplied).

As the court acknowledged in *Toombs* (at 70), this "maximum variance" was derived from its prior decision,

Wesberry v. *Vandiver*, 206 F. Supp. 276 (1962), at 279, where it had stated the rule in a more restricted fashion:

> It is the position of Plaintiffs that the population of each district should be within a range of ten to fifteen per cent of the average district population based on a division of the number of districts into the total population of the State.[3] (f.n. 3: An adoption of the view of the American Political Science Association.)

It is noteworthy that this formula calls for the division of the number of districts into the total population. The deviation permitted is between district populations, not from a normal representation ratio. The formula is therefore misapplied when used to justify wide variances contained in an apportionment plan for a bicameral legislature. See *League of Neb. Municipalities* v. *Marsh*, 242 F. Supp. 357 (1965), at 359 (As to a unicameral legislature. As the "little federal system" is no longer permitted state legislatures, there is no difference upon this point as to a bicameral legislature in which population based representation is not offset by area representation in the other house).

Moreover, no mathematical standard of permissible variance is recognized by this Court. In *Roman* v. *Sincock*, 377 U.S. 695 (1964) at 710, this court said:

> Our affirmance of the decision below is not meant to indicate approval of the District Court's attempts to state in mathematical language the constitutionally permissible bounds of discretion in deviating from apportionment according to population. In our view the problem does not lend itself to any such uniform formula, *and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme*

under the Equal Protection Clause (Emphasis supplied).

The formula adopted by the District Court was explained in *Roman* in footnote 21, page 710, as follows:

> The Court below suggested that population variance ratios smaller than 1.5 to 1 would presumably comport with minimal constitutional requisites, while ratios in excess thereof would necessarily involve deviations from population-based apportionment too extreme to be constitutionally sustained. See 215 F. Supp. at 190.

A 15% variance rule produces a ratio of 1.353 to 1, or very little less than that specifically disapproved by this Court.

VIII

The question is, not whether the plan is an improvement upon existing apportionment, with only those deviations due to a policy of honoring county boundaries, but whether these deviations from equal-vote apportionment have been, or can be, justified.

Assuming only for the purposes of this Jurisdictional Statement that The Board of Apportionment's plan was initially *prima facie* constitutional, did not the burden of going forward with the justification of its plan pass to The Board of Apportionment when obvious and easy changes were suggested to the District Court? Is this not true when the suggested changes would reduce the deviations from equal representation and would form districts having common interests and problems?

Contrasted with the approach of the District Court below is that of the Court in *League of Neb. Municipalities v. Marsh*, 242 F. Supp. 357 (1965), at 360:

> We have considered the opinion in [*Lucas* v. *Colorado General Assembly*, 377 U.S. 713, 730 (1964)] . . . , indicating that a maximum variance of 1.7 to 1 is at least arguably apportioned substantially on a population basis. If there were no redistricting plan other than L.B. 628 which could be devised following county lines, the 1.6 to 1 ratio present thereunder might arguably be permissible . . . .

However, the Court itself devised several plans which had less variance than the submitted plan. It thereupon held the submitted plan "not a constitutionally valid reapportionment plan" when tested on " . . . its totality and the record as a whole."

It is submitted that the approach of the District Court below raises questions of substantial importance in the practical application of the holding in *Reynolds* v. *Sims*, *supra*, and its companion cases.

If a plan of apportionment is to be upheld merely because it does not exceed a 15% "indirectly approved" variance, then the door closed to direct, numerical discrimination is reopened to sophisticated discrimination.

If a plan of apportionment is to be approved which disadvantages counties in both Houses of a bicameral legislature and makes no compensating adjustment in District areas between the two plans, then such areas are deprived of "substantial equality of meaningful representation," *Holt* v. *Richardson*, *supra*, at 730. Is this result constitutionally justified because no one variance exceeds 15%?

While exact arithmetical vote equality is not constitutionally required, certainly nothing less the greatest

achievable qualitative and quantitative equality should be required. When corrections to a plan of apportionment are possible which decrease the arithmetical variances and improve the quantitative factors, can it be said that approval of the uncorrected plan achieves the reapportionment envisioned by this Court in *Reynolds* v. *Sims, supra,* and its companion cases?

These issues deserve the plenary consideration of this Court. The Court has no doubt observed that token compliance with civil rights laws often is but a cloak for the continuance of unconstitutional practices. The observance of a "15% variance rule" should not be allowed to become the token by which voter discrimination is continued.

> And careful judicial scrutiny must of course be given in evaluating state apportionment schemes, *to the character as well as the degree of deviations from a strict population basis.*
>
> *Reynolds* v. *Sims,* 377 U.S. 533 (1964), at 581 (Emphasis supplied).

It is submitted that the District Court below failed to apply just this very test.

Respectfully submitted,

W. B. Brady
Room 100
Pyramid Life Building
Little Rock, Arkansas

Attorney for Appellant
Cecil L. Alexander

POSTSCRIPT

Since this Appellant has raised issues going to the "rational justification," or lack of any "rational justification" (See *Lucas* v. *Colorado General Assembly*, 377 U.S. 713 (1964), at 735, f.n. 27) behind certain variances from the ideal ratio of representation in the Arkansas plan of apportionment, the following portion of the newspaper account of the oral argument before the District Court below may help illumine some corners of the plan not focused upon by the lower court's opinion. The entire newspaper account of the argument is setout in Appendix H.

> "What was the problem then in connection with Van Buren, Cleburne, Faulkner and Conway Counties?" Judge Henley asked [Assistant Attorney-General Farrell Faubus, Attorney for The Board of Apportionment], recalling Brady's argument that it would be better to place Van Buren and Cleburne in one district and Faulkner and Conway in another.
>
> Faubus sidestepped the question.
>
> "It's the Board's contention," he replied, "that if any attack was to be made on any specific groupings of the plan it should have been made in the state Supreme Court * * *. It's our contention that this court must either find the plan constitutional or unconstitutional by constitutional standards and not as to the individual groupings."
>
> *Says Two Questions Are Before Court*
>
> Faubus said he thought the questions to be decided by the three-judge court were (1) whether

multimember House districts are constitutional or whether the House must have 100 districts, and (2) the amount of variation that should be allowed from the ideal population.

Faubus said the 30-day period for petitioning the state Supreme Court to review the plan already had expired.

After the hearing, a newsman asked Faubus why the Board of Apportionment had placed Conway County in a separate district and Faulkner, Cleburne and Van Buren Counties in another one.

"The Board will have to tell you that," Faubus said. "The Board approved the plan."

The younger Faubus was the chief architect of the reapportionment plans for both the House and Senate. He said that except for "three or four minor changes" the plans that the Board submitted to the Court were the ones he prepared.

Faubus was asked whether the decision to place Conway County in a separate district was one of the changes made by the Board. "I'm not commenting on the changes," Faubus said.

Conway County is the political stronghold of Sheriff Marlin Hawkins, close ally of the Faubus administration.

APPENDIX A

In The United States District Court, Eastern District of Arkansas Western Division

John Yancey, ... Plaintiff,

v.

Orval E. Faubus, Governor, Kelly Bryant, Secretary of State, Bruce Bennett, Attorney General, "The Board of Apportionment", ... Defendants.

LR-64-C-96 Memorandum Opinion

Before MEHAFFY, Circuit Judge, HENLEY, Chief District Judge, and YOUNG, District Judge.

PER CURIAM.

On January 28, 1965, this Court held that the scheme of apportionment of the membership of the Arkansas Legislature prescribed by sections 2 and 3 of Amendment 45 to the 1874 Constitution of the State of Arkansas was unconstitutional, and that defendants, members of the Board of Apportionment created by section 1 of that Amendment, would be required to prepare and put into effect a constitutional reapportionment of both the House of Representatives and the Senate. *Yancey* v. *Faubus, E.D. Ark.*, 238 F. Supp. 290. An appropriate decree was entered from which there was no appeal.

On May 17, 1965, the Supreme Court of Arkansas held that as a matter of State constitutional law our decision that the former plan of apportionment was invalid did not affect adversely other sections of the Amend-

ment, and that the Arkansas Legislature would continue to consist of a House of Representatives of 100 members and of a Senate of 35 members, and that the Board of Apportionment had the authority under section 1 of the Amendment to make a valid reapportionment. *Faubus* v. *Kinney*, 239 Ark. 443, 389 S.W. 2d 887. [1]

On July 15 of the current year the Board, in obedience to our decree, filed a plan of reapportionment, which plan is set forth as Appendix A to this opinion. The plan was filed originally with this Court and not with the Secretary of the State of Arkansas as provided by section 4 of Amendment 45. While the written record before us does not expressly reflect that the plan has ever been filed with the Secretary of State, we have been advised informally that it was in fact filed with the Secretary after it was filed here.

In due course the plaintiff, John Yancey, a citizen and qualified elector of Pulaski County, filed objections to the plan. Objections have also been filed by intervenors, Cecil L. Alexander and Mac Evans, members of the Arkansas House of Representatives from Cleburne and Van Buren Counties, respectively, and by representatives of the Crawford County Bar Association. Plaintiff objects generally to the plan; the objections of the intervenors are not only general but also specific to the extent that the plan affects the House representation of Cleburne, Crawford, and Van Buren Counties.

The objections have been heard upon documentary evidence, prehearing briefs, and oral argument.

---

[1] In the original proceedings in this Court the Board asserted that it possessed the power to reapportion otherwise than was provided by sections 2 and 3 of Amendment 45, and we took the Board at its word. The matter was discussed in our original opinion. Pages 300-302 of 238 F. Supp.

Under the prior apportionment the State of Arkansas contained 75 House districts, with each of the 75 counties being a district; the Senate was made up of members from 26 districts, and the districts and the membership of the Senate were "frozen" on the basis of distribution of Arkansas' population according to the census of 1950.

Under the new plan the State has 44 House districts and 25 Senate districts. Some of the districts of both types contain more than one county and some of both types are to be represented by more than one member.

The record before us reflects, and we find, that in preparing and submitting its plan the Board undertook in good faith to make a valid reapportionment of the Legislature in conformity with the principles laid down in what we have called the the Reapportionment Cases,[2] which require that both houses of a bi-cameral State legislature be apportioned, insofar as practicable, so that each member of each house represents approximately the same number of people, but permitting limited consideration to be given to other relevant factors such as geography, political subdivisions, and the like. The political philosophy underlying those decisions is frequently referred to by the slogan, "one man, one vote."

We further find that the Board in making its reapportionment gave primary consideration to population, a s[illegible]t was required to do; however, the Board in constituting the new districts undertook to respect county lines and to create districts of convenient sizes and numerous enough to insure maximum representation to the largest possible number of individual counties.

---

2 Reynolds *v.* Sims, 377 U.S. 533; W.M.C.A., Inc. *v.* Lomenzo, 377 U.S. 633; Maryland Committee for Fair Elections *v.* Tawes, 377 U.S. 656; Davis *v.* Mann, 377 U.S. 678; Roman *v.* Sincock, 377 U.S. 695; Lucas *v.* Forty-Fourth Colorado General Assembly, 377 U.S. 713.

The reapportionment was made with reference to the 1960 census, according to which the ideal or normal ratio for House membership was one Representative for every 17,860 people and one Senator for every 51,028 people. Bearing in mind the Board's approach to the problem, it was inevitable that the plan which the Board produced involved variations in both directions from the ideal ratios for both Houses. While a number of the variations are substantial, none of them exceeds the 15 percent suggested as tolerable in *Toombs* v. *Fortson,* N.D. Ga., 241 F. Supp. 65, and *Wesberry* v. *Candiver,* N.D. Ga., 206 F. Supp. 276, rev'd. on other grounds, *Westberry* v. *Vandiver,* 376 U.S. 1.

In attacking the plan the objecting parties contend generally that in creating multi-county and multimember districts for both Houses the Board acted unconstitutionally, and that the Board's adherence to county lines in creating the respective districts created such disparities of population among the several districts as to violate the "one man, one vote" philosophy of the Reapportionment Cases.

It is further contended by the intervenors that the inclusion of smaller counties, such as Cleburne, Crawford, and Van Buren, in districts containing one or more counties of large populations in effect disenfranchises the voters in the smaller counties and unconstitutionally discriminates against those voters.

The Board denies that any of those contentions possess merit.

At the outset of discussion we will say that it is not our function to effect revisions of the plan when such revisions are unnecessary to satisfy constitutional re-

quirements. We further recognize that the question is not whether the plan adopted by the Board is the best that could be devised. There are indeed instances where a district is not comprised of the most compatible counties, based on their diverse geographic and political compositions. In fact, it defies imagination to contrive a scheme that would meet with everyone's satisfaction. Moreover, the constitutionality of the plan cannot be meaesured fairly by reference to isolated, individual examples. We must determine whether the Board has in good faith fashioned a reapportionment plan complying with the rulings of the United States Supreme Court. The Board was faced with a difficult task due to the unequal distribution of the population of the State, in that a solution to one problem might well have given rise to others of equal or greater seriousness. In performing its task, the Board was entitled to some measure of administrative or legislative discretion, and in the permissible area of such discretion we will not substitute our judgment for that of the Board.

In appraising the plan it is our duty to look at it as a whole, to consider its rationality, its historical basis, and its overall conformity or lack of conformity to the requirement that each Representative and each Senator must represent substantially the same number of people so that the vote of each voter will ultimately have approximately the same weight as that of every other voter.

We first consider and reject the contention that the plan is automatically unconstitutional because both Houses will consis in part of multi-member and multi-county districts. We see nothing unconstitutional about a legislative district, whether a House district or a Senate district, consisting of more than one county, or about a county containing more than one legislative district. Cf. *Fortson*

v. *Dorsey*, 379 U.S. 433. In *Simms* v. *Reynolds*, *supra*, 377 U.S. at 577, the Court recognized that at least one house may have some multi-member districts; and we do not think that such recognition implies a requirement that the other house *must* have only single-member districts. If the apportionment of the membership of a bi-cameral State legislature meets other constitutional tests, we do not think that it is rendered invalid merely because there are multi-member and multi-county districts in both houses. We recognize that this question is not free from doubt, and, of course, if the Supreme Court of the United States holds ultimately that at least one house must be made up of single member districts, the Arkansas Legislature will have to be reapportioned again. But, we are not prepared to anticipate such a holding.

In behalf of Cleburne, Crawford, and Van Buren Counties, as individual counties, it is argued that citizens of those counties will probably be unable to elect representatives who reside therein, and that Foulkner County will monopolize both seats in the 14th District, and that Sebastian County will monopolize the five seats in the 12th District.

Those arguments are fallacious. The Constitution does not require that a person residing in a particular county of a multi-county district be represented in the Legislature by a citizen of his own county. Under the Board's plan the votes in a multi-county district are cast o na district-wide basis, and election is determined by a district-wide majority or plurality. The representatives chosen to represent the district will represent all of the people of the district. And (it is not necessarily true that the voters residing in the more populous counties of a district will customarily or consistently refuse to sup-

port candidates from the less populous counties of the district.

We think that the Board was justified rationally and historically in constructing the reapportioned Legislature along county lines and did not act arbitrarily or capriciously in forming the districts themselves.

The most serious objection made to the plan arises from the variations from the ideal House and Senate ratios of members to people which the plan permits, and it is those variations which have given us our principal concern.

It has been stipulated that the Board considered that the Reapportionment Cases permit a variation of not more than 15 percent above or below the ideal ratios, and it is contended here by the objecting parties that the Board deliberately used the maximum variation supposedly permitted in determining the composition of districts and the number of Representatives or Senators to be allotted to each district. In other words, it is contended that the Board unlawfully employed a "built-in" variation for the purpose of avoiding the requirement of equal representation based on population. Cf. *Toombs* v. *Fortson, supra,* 241 F. Supp. at 70.

We do not think that the Board's action can fairly be so appraised. When the Board decided to respect the integrity of the counties and to lay out the districts with reference to county lines, variations in district populations followed automatically. It must have been obvious to the Board that population variations between and among the counties of Arkansas would be reflected in deviations in both directions from the ideal ratios in the respective districts, and it appears to us that the Board

simply felt that the variations were tolerable if they did not exceed 15 percent either way.

It is quite true, as counsel point out, that a variation of not more than 15 percent or any other variation is not permitted automatically by the 14th Amendment. But, the authorities do suggest that a deviation of not more than 15 percent either way is tolerable, and in general the deviations involved in the plan under consideration are substantially less than 15 percent.

In general, the Senate deviations are not great, and in only one District is the 15 percent figure approached closely. In four of the 25 Districts the deviation from the ideal is less than one percent. The average variation in the 13 over represented Senate Districts is 4.97 percent, and the average variation in the 12 under represented Districts in that House is 4.61 percent. The spread between those average variations is 9.58 percent.

Deviations from the ideal ratio are somewhat more marked in the House than in the Senate. In the House the average over representation is about 6.84 percent and the average under representation is about 6.65 percent. Those variations from the ideal do not greatly exceed either way the Senate variations, but the spread is wider, being 13.49 percent.

We recognize that in both Houses there are individual variations both above and below the averages, but with its imperfections, the plan is certainly an improvement over the apportionment which existed prior to the Board's action, and the Board's plan goes far toward correcting the imbalance in representation of the rural over the urban areas of the State which brought about the litigation in the first place. We are persuaded that the plan should be given our approval.

A decree will be entered approving the plan, overruling the objections of plaintiff thereto, and dismissing the interventions. Each side will bear its own costs.

Dated this 4 day of November, 1965.

Pat Mehaffy
United States Circuit Judge
J. Smith Henley
United States District Judge
Gordon E. Young
United States District Judge

EXHIBIT A

HOUSE OF REPRESENTATIVES

District	County	No. of Representatives	Total Population	Variance
1	Benton	2	36,272	1.5 %
2	Carroll & Madison	1	20,352	13.93%
3	Boone	1	16,116	9.77%
4	Marion, Searcy & Pope	2	35,342	1.07%
5	Baxter, Fulton	1	16,600	7.07%
6	Randolph, Clay	2	33,778	5.42%
7	Washington	3	55,797	4.11%
8	Newton, Johnson	1	18,384	2.91%
9	Stone, Izard, Sharp	1	19,379	8.49%
10	Lawrence	1	17,267	3,34%
11	Greene, Craighead	4	72,501	1.46%
12	Crawford, Sebastian	5	88,003	1.47%
13	Franklin, Logan, Yell	2	38,110	6.67%
14	Van Buren, Cleburne, Faulkner	2	40,590	13.6 %
15	Independence	1	20,048	12.22%
16	Jackson, Woodruff	2	36,797	2.99%
17	Poinsett	2	30,834	13.69%

18	Mississippi	4	70,174	1.79%
19	Scott, Polk	1	19,278	7.91%
20	Montgomery, Garland	3	52,067	2.84%
21	Conway	1	15,430	13.6 %
22	Perry, Pulaski	13	247,907	6.75%
23	White, Lonoke	3	57,296	6.91%
24	Prairie, Arkansas	2	33,870	5.19%
25	Monroe	1	17,327	3.00%
26	Cross	1	19,551	9.44%
27	St. Francis	2	33,303	6.78%
28	Crittenden	3	47,564	11.24%
29	Lee, Phillips	4	64,998	9.03%
30	Sevier, Little River	1	19,367	8.41%
31	Howard, Pike	1	18,742	4.91%
32	Saline, Hot Spring	3	50,849	5.11%
33	Grant, Jefferson	5	89,669	.39%
34	Hempstead	1	19,661	10.05%
35	Clark, Nevada	2	31,650	11.41%
36	Dallas, Cleveland	1	17,466	2.22%
37	Lincoln, Desha	2	35,217	1,42%
38	Miller	2	31,686	11.31%
39	Lafayette, Columbia	2	37,430	4.76%
40	Ouachita	2	31,641	11.43%

41	Calhoun, Union	3	55,509	3.57%
42	Bradley, Ashley	2	38,249	7.05%
43	Drew	1	15,213	14.83%
44	Chicot	1	18,990	6.39%

EXHIBIT B

SENATE

District	County	No. of Senators	Total Population	Variance
1	Benton, Carroll	1	47,556	6.81%
2	Washington	1	55,797	9.32%
3	Madison, Crawford, Franklin, Johnson	1	53,020	3.88%
4	Sebastian, Scott, Logan, Polk	2	101,920	.14%
5	Howard, Sevier, Hempstead, Nevada	1	51,395	.07%
6	Pike, Clark, Dallas, Grant	1	47,630	6.67%
7	Montgomery, Garland	1	52,067	2.02%
8	Pope, Yell, Conway, Perry	1	53,474	4.77%
9	Boone, Marion, Baxter, Newton, Searcy	1	46,187	9.5 %
10	Saline, Hot Spring	1	50,849	.36%
11	Little River, Miller, Lafayette	1	51,927	1.74%
12	Ouachita, Columbia	1	58,041	13.72%
13	Union	1	49,518	2.97%

14	Stone, Van Buren, Cleburne, Faulkner	1	46,884	8.13%
15	Fulton, Izard, Sharp, Randolph, Lawrence	1	49,529	2.95%
16	Independence, White	1	52,793	3.44%
17	Jackson, Woodruff, Prairie	1	47,312	7.29%
18	Pulaski, Lonoke	5	267,531	4.83%
19	Cleveland, Calhoun, Bradley, Ashley	1	51,184	.28%
20	Jefferson, Lincoln	2	95,820	6.12%
21	Monroe, Lee, Arkansas, Phillips	2	105,680	3.53%
22	Desha, Drew, Chicot	1	54,973	7.71%
23	Clay, Greene	1	46,456	8.97%
24	Craighead, Mississippi, Poinsett	3	148,311	3.12%
25	Cross, Crittenden, St. Francis	2	100,418	1.62%

APPENDIX B

In The United States District Court Eastern District of Arkansas Western Division

John Yancey ..... Plaintiff

v. LR-64-C-96

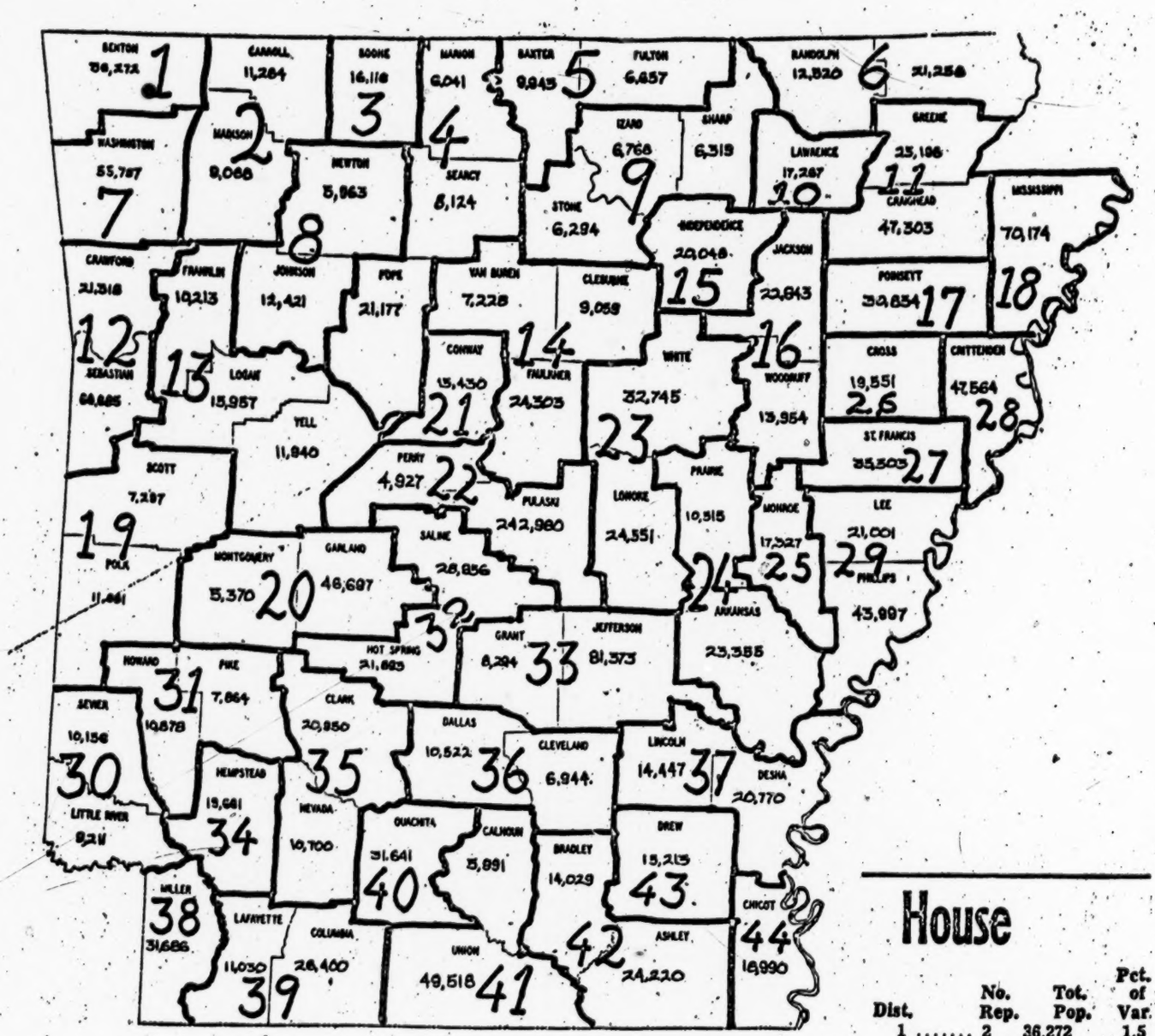
Orval E. Faubus, Governor, Kelly Bryant, Secretary of State, Bruce Bennett, Attorney General, "The Board of Apportionment", Nathan Gordon, Lt. Governor of The State of Arkansas and President of the Senate and J. H. Cottrell, Jr., Speaker of the House of Representatives of the State of Arkansas ..... Defendants

DECREE

Pursuant to memorandum opinion this day filed herein, it is consdireed, ordered, adjudged and decreed that the plan of reapportionment of the membership of the Senate and House of Representatives of the General Assembly of the State of Arkansas submitted by defendants as members of the Board of Apportionment established by Amendment 45 to the Constitution of the State of Arkansas, be, and it hereby is, approved and is to be put into effect not later than the General Election to be held in November, 1966, that is to say that members of both Houses of the 66th General Assembly of the State of Arkansas must be elected in conformity with the Board's plan.

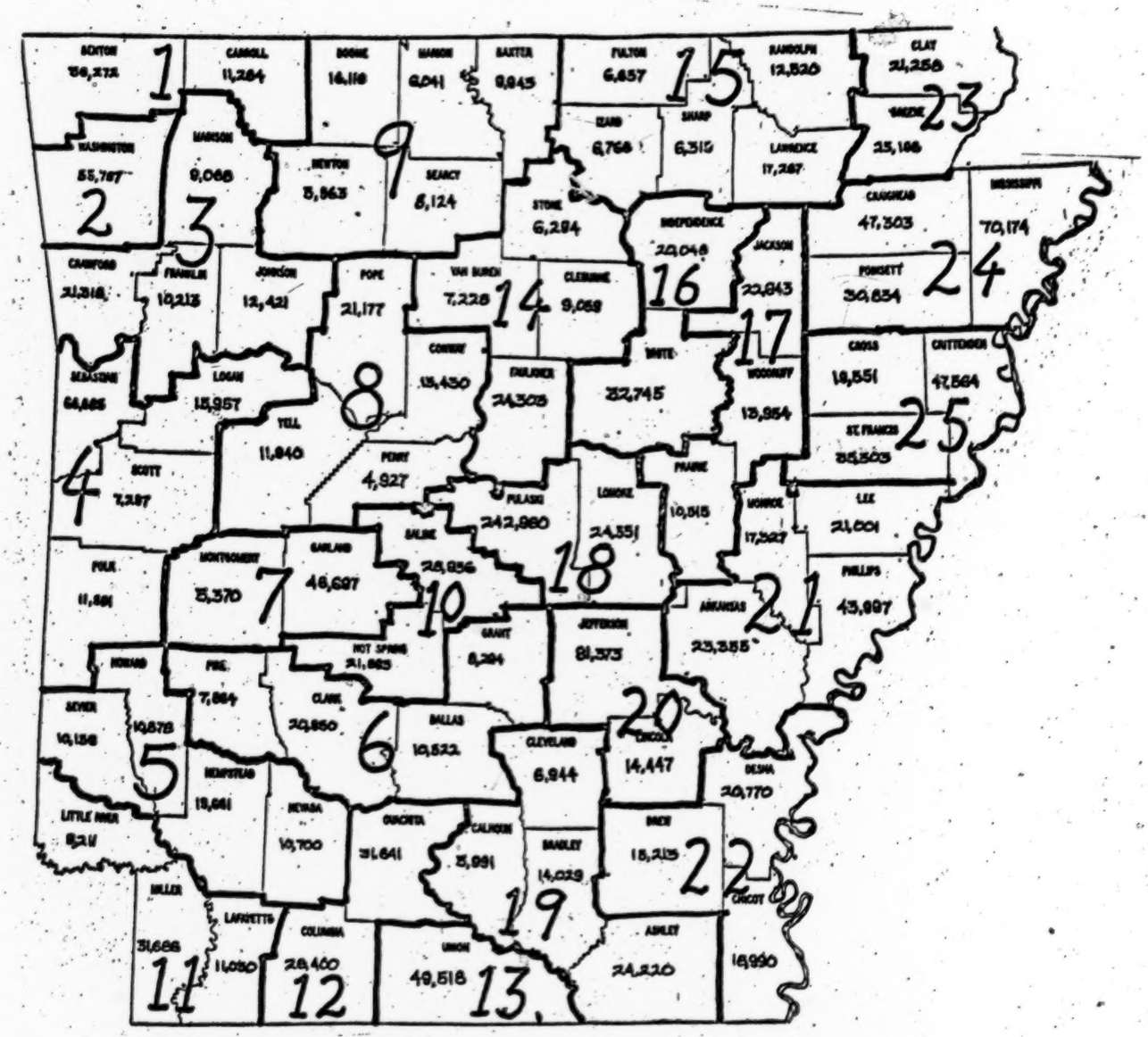
Objections of plaintiff to the plan are overruled, and the interventions filed herein are dismissed. Each side is to bear its own costs.

Pat Mehaffy
United States Circuit Judge
J. Smith Henley
United States District Judge
Gordon E. Young
United States District Judge



House

Dist.	No. Rep.	Tot. Pop.	Pct. of Var.
1	2	36,272	1.5
2	1	20,352	13.93
3	1	16,116	9.77
4	2	35,342	1.07
5	1	16,600	7.07
6	2	33,778	5.42
7	3	55,797	4.11
8	1	18,384	2.91
9	1	19,379	8.49
10	1	17,267	3.34
11	4	72,501	1.46
12	5	88,003	1.47
13	2	38,110	6.67
14	2	40,590	13.6
15	1	20,048	12.22
16	2	36,797	2.99
17	2	30,834	13.69
18	4	70,174	1.79
19	1	19,278	7.91
20	3	52,067	2.84
21	1	15,430	13.6
22	13	247,907	6.75
23	3	56,296	6.91
24	2	33,870	5.19
25	1	17,327	3.00
26	1	19,551	9.44
27	2	33,303	6.78
28	3	47,564	11.24
29	4	64,998	9.03
30	1	19,367	8.41
31	1	18,742	4.91
32	3	50,849	5.11
33	5	89,669	.39
34	1	19,661	10.05
35	2	31,650	11.41
36	1	17,466	2.22
37	2	35,217	1.41
38	2	31,686	11.31
39	2	37,430	4.76
40	2	31,641	11.43
41	3	55,500	3.57
42	2	38,249	7.05
43	1	15,213	14.83
44	1	18,990	6.39



The new Senate districts shown by the heavy lines and their numbers.

Dist.	No. Rep.	Tot. Pop.	Pct. of Var.
1	1	47,556	6.81
2	1	55,797	9.32
3	1	53,020	3.88
4	2	101,920	.14
5	1	51,395	.07
6	1	47,630	6.67
7	1	52,067	2.02
8	1	53,474	4.77
9	1	46,187	9.5
10	1	50,849	.36
11	1	51,927	1.74
12	1	58,041	13.72
13	1	49,518	8.13
14	1	46,884	8.13
15	1	49,529	2.95
16	1	52,793	3.44
17	1	47,312	7.29
18	5	267,531	4.83
19	1	51,184	.28
20	2	95,820	6.12
21	2	105,680	3.53
22	1	54,973	7.71
23	1	46,456	8.97
24	3	148,311	3.12
25	2	100,418	1.62

Senate

Arkansas Gazette.

LITTLE ROCK, THURSDAY, JULY 15, 1965.

State Apportioned Into 25 Senatorial, 44 House Districts

By RICHARD ALLIN
Of the Gazette Staff

The General Assembly was reapportioned Wednesday by the state Board of Apportionment acting under the order of federal District Court.

The Board divided the 75 counties into 44 House districts and 25 Senate districts. For the first time in Arkansas history some counties will have to share a representative with another. The number of Senate districts was reduced from 26.

Pulaski County is thrown with Perry County in the new 22d House district, which will have 13 representatives. It will be with Lonoke County in the 18th Senatorial district with five senators.

Pulaski County now has 11 representatives and Perry County one—Representative Paul Van Dalsem. Under the new plan, voters in both counties will cast votes on all 13 state representative positions, meaning that if Van Dalsem is a candidate he will be voted on by Pulaski County, too. There is no law that says all 13 can't be from Pulaski County.

Pulaski has three senators in the old 15th Senatorial District. Lonoke County shares two senators with Prairie, Woodruff and White County.

The vote on the House and Senate reapportionment plans was unanimous by Governor Faubus, the chairman, Secretary of State Kelly Bryant and Attorney General Bruce Bennett, members of the Board.

The new seating arrangement will be submitted today to the three-judge Federal District Court that ordered it done. Federal Judges Pat Mehaffy, J. Smith Henley and Gordon E. Young were sitting as the court of the Eastern District of Arkansas, Western Division, when they handed down their reapportionment order January 28.

In a petition to be filed in federal court, Attorney General Bennett asks that "If this court finds that this plan does not meet constitutional standards, the defendants hereby pray that this court will allow them to submit an alternate or alternate plans."

Governor Faubus also remarked that if the plan is unacceptable, he hoped that the court would provide some guidelines of what is and is not acceptable.

Governor Faubus Doesn't Like Plan

Although Governor Faubus voted for the plan, he condemned it after the vote was taken. When questioned, Faubus replied, "I don't like a bit of it. I think the plan is worse than the one we were operating under as far as representation of the people of the whole state is concerned."

Mr. Faubus said some of the districts were inequitably apportioned, but that when one error was corrected in the apportioning, another sprang up.

He said he was sure many persons would not like the plans. "If anyone anywhere wants to submit a better plan, I'd be glad to look it over," he said.

If anybody wants to criticize, he added, "I suggest that they cuss the United States Supreme Court."

Bennett agreed that in some cases some voters will be disenfranchised by the plan.

The plan will not go into effect until it has the approval of the federal court and is filed with the secretary of state.

The reapportionment plans were the joint work of Bryant, Bennett and Assistant Attorney General Farrell Faubus, the governor's son.

The reapportionment was ordered in a lawsuit against the Board of Apportionment by John Yancey of Little Rock. He charged that his rights were violated by the practice of having one representative for each of the 75 counties and apportioning the remaining 25 among the more populous counties. He also charged that the freezing of the 35 senators into 26 senatorial districts by Amendment 45 (adopted 1956) of the state Constitution was also violative of his rights.

Two 'Ideal' Figures Used as Guide Posts

The plans were adopted by the Board with two "ideal" figures in mind. Under the ideal, there would be one state representative for each 17,863 persons and one senator for each 51,036, based on the 1960 census.

But the ideal was not possible, so the Board adopted as a guideline a disparity of 15 per cent above and below the ideal.

The state Constitution required the Board to retain 100 House members and 35 senators.

The keystone of the reapportionment, as ordered by the United States Supreme Court, was "one man-one vote." The mean effect is to shift legislative influence to the more populous areas away from the rural areas.

In Arkansas the general effect is to shift the weight of representatives southward and eastward.

In counties with more than one representative, the representatives will run at large, unless changes are ordered by the federal court.

The alternative is to divide the state into 100 separate House districts (13 in Pulaski and Perry Counties), with voters of a district voting for only one representative).

The reapportionment plan changes the philosophy of representation under which Arkansas—and most other states—had heretofore operated when both houses were not apportioned strictly on population. In the past, population was not the sole consideration in Senate representation.

The Arkansas House of Representatives was last reapportioned in 1961 by the state Board of Apportionment, but their attempt to tamper as little as possible was overruled by the state Supreme Court, which submitted a plan of its own.

That apportionment contained the flaw that was cast out by the federal court. It started with the premise that each of the 75 counties should have at least one representative, with the remaining divided among more populous counties.

Van Dalsem Wanted Perry County With Pulaski; Believes He'll Win

By RICHARD ALLIN
Of the Gazette Staff

Representative Paul Van Dalsem said Thursday that Perry County was put in the same House district as Pulaski County in the reapportionment of the Arkansas legislature at his request.

And he scoffed at reports that his chances for re-election will be hurt by having to be voted on in Pulaski County as well as Perry County, which will comprise the new 22d District.

He expects to be one of the 13 state representatives elected from the two counties in the 1966 elections.

"I'll take my chances with these folks," Van Dalsem said of the Pulaski voters. "It was my request that Perry County be placed in with Pulaski. I believe they will elect me because of my qualifications."

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Van Dalsem is the senior member of the legislature with 26 years of service—all for the state's smallest county, Perry (population 4,927).

His influence comes from:

1. His senior position on top committees, such as Rules and Education, and the Legislative Council;

2. His chairmanship for 16 years of the key Revenue and Taxation Committee;

3. Friendly relations with the administration;

Staff Photo
PAUL VAN DALSEM

4. Having the best knowledge of parliamentary procedure and maneuvering (this by his admission, and that of his colleagues);

5. Rarely missing a committee meeting, never a House session; having detailed knowledge of nearly all legislative measures regardless of importance;

6. Being a ruthless but dependable trader;

7. An ability to make a lot of noise effectively.

Van Dalsem likes to talk about his abilities with blustery amiability. He can be mean and bad - tempered, sometimes embarrassing in committee or in House sessions, but he doesn't mind being called names.

Perry County has been jokingly called the most over-represented county in Arkansas but there's truth in this. It is so small in population that it fails to meet the constitutional requirements to be a county—which is that it have a population of at least 5,000.

"Even my political enemies have never said I didn't represent the county from which I was elected," Van Dalsem said. He predicts his election

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Politics

(Continued from Page 1)

in the Pulaski-Perry district for that reason.

He views the state's largest delegation as raw material in his hands.

"Can you even think what I could do with 13 votes behind me," he asked gleefully. "I could trade out the legislature."

He even imagines himself as a bridge between city and county. "With respect to the rural areas, I could get a co-operative group that would help Pulaski County."

Waving his hand broadly for effect, he said. "That's what I've got to offer Pulaski County. Even though there are a few folks in the House that don't like me, they respect me. They know I know more about state government than just about anybody.

"And a lot of people have called me an S.O.B. but no one ever called me a liar. "I can represent Pulaski County as well as Perry County. When something needs to be done I can do it."

Van Dalsem sees a common interest between the two counties, not the least of which is that "half the people in Perry County work in Pulaski County." And many of those, he says, have jobs courtesy of Paul Van Dalsem.

Van Dalsem sees another benefit in his election as one of the 22d District's 13 representatives:

"The law says that the Arkansas Legislative Council can have only one state representative from each county. By electing me, Pulaski County can have two members on the Council. It's the most important arm of the legislature."

And he sees himself with a quality needed by the new district: "Pulaski County needs a fighter."

Van Dalsem is a big man, with a big voice, who drives big cars, smokes big cigars and does not radiate false modesty.

"I like this kind of stuff," he says of his being in politics. It's a challenge to me. Something you like you do well."

Appendix F

ARKANSAS DEMOCRAT

Editorial Section—D
••• LITTLE ROCK, AUGUST 8, 1965

Backstage at the Capitol

Many Want Harris To Delay Resigning

By GEORGE DOUTHIT
Democrat Staff Writer

It isn't official, but some folks would like for Rep. Oren Harris to hang onto his congressional post long enough to avoid calling a special election to name his successor. There is a good reason—cost of campaigning.

Harris is slated to get a federal judgeship and resign from Congress.

The first man to mention that he would like to run for the job was Atty. Gen. Bruce Bennett. Since then, at least a dozen names have been mentioned as "being interested." Harris will have to resign from Congress before any election can be called. There is a good indication that it won't be until next spring.

"If Oren would just hang onto his job long enough to eliminate a special election, he would save a lot of people some money," we were told last week. So, we asked Bennett about it.

Six Elections Possible

Bennett said: "I don't think there will be a special election, at least for six months. Then I don't know what is going to happen. But a man running for the job could have to go through six elections.

"For instance, the Democrats could call a preferential primary and then a run-off primary to decide who was going to seek the job in a special election. Then if he wanted to keep his job, he would have to run in the regular primaries next July and August. After that he would have to run in the general election. That is six elections for one job. That's too many to try to finance."

Reapportionment Protests

Two protests have been filed against the way the State Board of Apportionment recently re-seated the 100-member House of Representatives. In both counties have arisen the fears that their candidates will be gobbled up by those coming from the larger counties.

Rep. Cecil Alexander of Cleburne County objects to having to run against candidates from much larger Faulkner County. The bar association of Crawford County thinks the same about being in the same House district with much larger Sebastian County.

Van Dalsem Not Objecting

What about Paul Van Dalsem? He hails from tiny Perry County and is going to run against candidates in Pulaski County. Van Dalsem not only isn't objecting, he helped to arrange it that way.

We fear that the charges set forth by Alexander and the Crawford County bar actually are setting out implications that Faulkner and Sebastian counties are "machine counties," meaning that whoever is "hand picked" by the machine leaders will get the job.

We do know that Sheriff Marlin Hawkins of Conway County didn't want his representative, Loid Sadler, running over in larger Faulkner County. We firmly believe that any candidate who has what it takes to get votes in his own county also can get votes in the adjoining counties.

Appendix G

Farrell Faubus Asks Judges to Approve Apportioning Plan

By JEROL GARRISON
Of the Gazette Staff

Assistant Attorney General Farrell Faubus told a three-judge federal court Friday that the state Board of Apportionment "conscientiously tried to observe constitutional standards" in reorganizing the districts of the Arkansas House and Senate to provide equal representation.

Faubus asked at a court hearing on the reapportionment plan that the judges approve the plan as submitted by the Board on July 15. The Board consists of Farrell's father, Governor Faubus, Secretary of State Kelly Bryant and Attorney General Bruce Bennett.

Three other lawyers objected to certain aspects of the plan for reapportioning the House of Representatives. They asked the Court to reject the House plan and send it back to the Board of Apportionment for revision.

The judges—Pat Mehaffy, J. Smith Henley and Gordon E. Young—listened to 30 minutes of arguments by the lawyers and then took both the House and Senate plans under advisement. The judges had ordered the reapportionment of both houses last January to comply with the United States Supreme Court's "one man, one vote" mandate.

The plan places the 100 representatives into 44 House districts and the 35 senators into 25 Senate districts. It abolishes the present system under which each of the 75 counties is entitled to at least one seat in the House regardless of its population.

John Yancey of Little Rock, who filed the lawsuit that resulted in the reapportionment order, was represented at the hearing by Thorp Thomas. The Crawford County Bar Association was represented by its president, Fines F. Batchel or Jr. of Van Buren, and Representatives Cecil L. Alexander of Cleburne County and Mack Evans of Van Buren County were represented by William B. Brady of Little Rock.

Evans intervened in the case Friday, adopting all of the pleadings previously filed by Alexander.

House Plan Target Of All Arguments

All of the lawyers directed their arguments at the house reapportionment plan. Thomas said the Board had proceeded on a "false premise" by assuming it could deviate 15 per cent above and 15 per cent below the ideal population figure in establishing each district.

"That actually gives you a mathematical spread of 30 per cent" Thomas said. He said the total spread should be no more than 15 per cent.

Thomas also argued that the state should be divided into 100 House districts with one representative per district. He interpreted Supreme Court rulings to mean that only one chamber—House or Senate—could have multimember districts.

To arrive at 100 districts with "strict neutrality where there can be no gerrymandering, no political considerations," Thomas suggested that the Board feed census information into an electronic computer.

Batchelor argued that the Board of Apportionment had placed too much emphasis on mathmatics by insisting that the population of every district be within 15 per cent of the ideal figure. He said the Supreme Court recognized that there would be instances in which it would be best to exceed this figure.

The people of Crawford County, Batchelor said, would like to be in a separate district, which would have a population 19 per cent above the ideal mark.

The reapportionment plan lumps Crawford (population 21,318) with Sebastian County (population 66,685) and gives the two-county district five representatives to be elected at large. Batchelor said that would deprive Crawford County of representation.

"It is a physical impossibility for less than 25 per cent of the people in a two-county district to elect any man," he said. Because we have 777 more people in Crawford County than the 15 per cent variance, the entire 21,318 are disenfranchised."

"I feel the Board of Apportionment has worried more about figures than about individuals," Batchelor argued.

Argument Repeated For Second Locale

Brady made the same type of argument in behalf of Cleburne and Van Buren Counties, which will be placed in the same House district with Faulkner County. He said the people of Cleburne and Van Buren Counties would be deprived of "meaningful representation," since the combined population of those counties (16,287) is dwarfed by Faulkner County's 24,303 population.

Brady noted that Conway County, with a population of 15,430, had been left in a separate district. He suggested that Conway and Faulkner Counties be placed in one district with two representatives and that Cleburne and Van Buren Counties be placed on one district with one representative.

"The [Arkansas] River Counties of Conway and Faulkner have a great similarity of interests and great community of interest that are not shared with the other counties [Cleburne and Van Buren]," Brady said.

He said the people of Cleburne and Van Buren Counties also have the same interests, among them the development of Greers Ferry Reservoir, which is located in both counties. He said the two counties are co-operating in a number of projects.

A district composed of Conway and Faulkner Counties and having two representatives would vary 11.2 per cent above the ideal population, and a Cleburne-Van Buren district with one representative would vary 8.8 per cent below the ideal. As a separate district, Conway County would be 13.6 per cent over - represented and the Faulkner-Cleburne-Van Buren district would be 13.6 per cent under-represented.

Should Few Faults Upset Entire Plan?

Judge Henley asked Brady this question: "Suppose the court finds the plan overall is not unreasonable except that in three or four or five cases the Board might have done better. Do you think the court ought to upset the plan and impose its judgment upon the Board with respect to those cases?"

Brady replied that it should. He said a three-judge court in another state liked the general tone of a reapportionment plan but sent it back to the appropriate state agency for improvements in certain areas.

Judge Henley then wanted to know what the three-judge court should consider in its ruling and what it should leave for review by the state Supreme Court.

"This court is only interested in the constitutional aspect [equal representation] of this case," Brady replied. "There are various other political elements that the state [Supreme Court] could consider and perhaps find the plan not acceptable, but the basic constitutional problem is the only one before this court."

Farrell Faubus disagreed with Batchelor and Brady that Crawford and Cleburne and Van Buren Counties would be deprived of representation. He said under the analogy of their argument a township within a county could claim that it was being deprived of representation.

"Just because a smaller county is put in with a larger one doesn't seem to me that they are automatically deprived of any representation," Faubus said. "They still have a certain number of votes."

Judge Asks Criteria For Grouping Counties

Judge Henley asked what criteria the Board had used in grouping the counties. Faubus said besides the 15 per cent maximum variation from the ideal population, the Board tried to create as many districts as possible.

"In other words, the Board stayed away from large groupings of counties where, say, five or six representatives would have to run over a very large area," Faubus said. "It tried to keep the district as small as possible."

Judge Mehaffy wanted to know why the Board placed Crawford and Sebastian Counties in the same district. Faubus said the Board felt that a 15 per cent variation above ideal population was as far as it could go and still meet constitutional standards. He said Crawford could have been grouped with Franklin County but that would have caused a population variance of 20 per cent in some other district.

"What was the problem then in connection with Van Buren, Cleburne, Faulkner and Conway Counties?" Judge Henley asked, recalling Brady's argument that it would be better to place Van Buren and Cleburne in one district and Faulkner and Conway in another.

Faubus sidestepped the question.

"It's the Board's contention," he replied, "that if any attack was to be made on any specific groupings of the plan it should have been made in the state Supreme Court . . . . It's our contention that this court must either find the plan constitutional or unconstitutional by constitutional standards and not as to the individual groupings."

Says Two Questions Are Before Court

Faubus said he thought the questions to be decided by the three-judge court were (1) whether multimember House districts are constitutional or whether the House must have 100 districts, and (2) the amount of variation that should be allowed from the ideal population.

Faubus said the 30-day period for petitioning the state Supreme Court to review the plan already had expired.

After the hearing, a newsman asked Faubus why the Board of Apportionment had placed Conway County in a separate district and Faulkner, Cleburne and Van Buren Counties in another one.

"The Board will have to tell you that," Faubus said. "The Board approved the plan."

The younger Faubus was the chief architect of the reapportionment plans for both the House and Senate. He said that except for "three or four minor changes" the plans that the Board submitted to the Court were the ones he prepared.

Faubus was asked whether the decision to place Conway County in a separate district was one of the changes made by the Board. "I'm not commenting on the changes," Faubus said.

Conway County is the political stronghold of Sheriff Marlin Hawkins, close ally of the Faubus administration.

Appendix H